

UNITED STATES COURT OF APPEALS DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 24-1152 2. DATE DOCKETED: 05-22-2024
3. CASE NAME (lead parties only) Edison Electric Institute v. U.S. Environmental Protection Agency
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: U.S. Environmental Protection Agency
 - b. Give agency docket or order number(s): EPA-HQ-OAR-2023-0072; 89 Fed. Reg. 39,798
 - c. Give date(s) of order(s): May 9, 2024
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☐ Yes ☒ No
If so, when was it filled? _____ By whom? _____
Has the agency acted? ☐ Yes ☐ No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See Attachment 6(e)
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
See Attachment 6(f)
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☐ Yes ☒ No If YES, give case name(s) and number(s) of these cases and identify court/agency: _____
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates. _____

Signature /s/ Amanda Shafer Berman Date 06-20-2024

Name of Counsel for Appellant/Petitioner Amanda Shafer Berman

Address Crowell & Moring LLP, 1001 Pennsylvania Ave., NW, Washington, DC 20004

E-Mail aberman@crowell.com Phone (202) 624-2500 Fax (202) 628-5116

ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

Attachment 6(e): Basis of Petitioner's Claim of Standing

Petitioner Edison Electric Institute (“EEI”) has standing to challenge EPA’s final agency actions, collectively entitled “New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule,” 89 Fed. Reg. 39,798 (May 9, 2024) (Final Rules). *See Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977).

EEI is the association that represents all U.S. investor-owned electric companies. EEI members, many of whom are directly regulated by the Final Rules challenged here, provide electricity for nearly 250 million Americans and operate in all 50 States and the District of Columbia. An important function of EEI is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. Here, EEI submitted comments on the proposal¹ explaining the impacts the Final Rules would have on its members.²

¹ *New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule* (Proposed Rules or Proposal), 88 Fed. Reg. 33,240 (May 23, 2023).

² *See* Edison Electric Institute, *Comments on EPA’s Proposed Clean Air Act Section 111 Rules for Power Plants*. Docket No. EPA-HQ-OAR-2023-0072 at 17 (Aug. 8, 2023) (EEI Comments), [EPA-HQ-OAR-2023-0072-0772](https://www.epa.gov/epa-hq-oar-2023-0072-0772).

EEI members—privately-owned utilities that own and operate many of the electric generation units subject to the Final Rules—will be regulated under the Final Rules, and thus are objects of the very governmental regulation at issue. As such, EEI members’ standing to challenge the Final Rules is self-evident. *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002) (citation omitted).

Moreover, the interests EEI seeks to protect are germane to its purposes, and individual member participation is not required because EEI is seeking equitable relief, not money damages. *See United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553-54 (1996).

In sum, EEI has standing to challenge the Final Rules.

Attachment 6(f): Cases Involving the Same Underlying Agency Order

This Court has consolidated the following cases, each of which challenges the Final Rule:

- State of West Virginia, et al. v. EPA, No. 24-1120 (D.C. Cir.) (lead case)
- State of Ohio, et al. v. EPA, No. 24-1121 (D.C. Cir.)
- National Rural Electric Cooperative Association v. EPA, No. 24-1122 (D.C. Cir.)
- National Mining Association, et al. v. EPA, No. 24-1124 (D.C. Cir.)
- Oklahoma Gas and Electric Company v. EPA, No. 24-1126 (D.C. Cir.)
- Electric Generators for a Sensible Transition v. EPA, No. 24-1128 (D.C. Cir.)
- United Mine Workers of America, AFL-CIO v. EPA, No. 24-1142 (D.C. Cir.)
- International Brotherhood of Electric Workers, AFL-CIO v. EPA, No. 24-1143 (D.C. Cir.)
- International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO v. EPA, No. 24-1144 (D.C. Cir.)
- Midwest Ozone Group v. EPA, No. 24-1146 (D.C. Cir.)
- Edison Electric Institute v. EPA, No. 24-1152 (D.C. Cir.)
- NACCO Natural Resources Corporation v. EPA, No. 24-1153 (D.C. Cir.)
- Idaho Power Company v. EPA, No. 24-1155 (D.C. Cir.)

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 20th day of June 2024, I filed the foregoing using this Court's Appellate CM/ECF system, which effected service on all parties.

/s/ Amanda Shafer Berman

Amanda Shafer Berman